Filed 7/24/19 In re M.O. CA1/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re M.O., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. M.O., Defendant and Appellant.	A153826 (Napa County Super. Ct. No. JV18584)

M.O. appeals from the juvenile court's jurisdictional order sustaining allegations that he vandalized property and discharged a BB gun with gross negligence. He claims the juvenile court erred when it limited cross-examination of the principal witness against him. He contends his counsel was ineffective for failing to impeach this witness with his prior convictions and for failing to assert a Sixth Amendment objection to the court's limits on cross-examination. In addition, he challenges the electronic search probation condition in the juvenile court's dispositional order. We modify the challenged condition and otherwise affirm the orders.

BACKGROUND

In July 2017, the prosecution filed a juvenile wardship petition alleging M.O. came within Welfare and Institutions Code section 602, for felony vandalism over $400 in violation of Penal Code section 594, subdivision (b)(1), and discharging a BB gun with

gross negligence in violation of Penal Code section 246.3. The matter proceeded to a contested jurisdictional hearing, at which the following evidence was presented:

On July 24, 2017, at about 2:00 a.m., David Wildhagen woke to the sound of BB shots hitting his house. He called 911 shortly thereafter.

The audio of his 911 call was played at the hearing. Wildhagen, who was standing outside his front door but out of sight of any onlookers, told dispatch, "I've got some kids shooting air soft bb's at my house. They've broken my window. They are right there on the corner right now approaching my house." Wildhagen reported "three or four of them" all dressed in black including "a kid in a black beanie with long hair, dressed in all black." They were "staying in a white BMW" that was parked. Then, they were "standing there waiting" in front of his neighbor's house across the street. Wildhagen did not know who they were and did not see any guns.

One of them, whom Wildhagen reported was wearing a burgundy jacket and white shoes, crossed the street towards Wildhagen's house. Wildhagen moved inside. When Wildhagen saw another in the group approaching, he yelled, "Back up! Back the fuck up!" The group ran back to their car. Wildhagen then told dispatch more people, "like six of them," were taking off in all directions. Wildhagen said this was the second time that night they shot his house. When asked why he had not reported it earlier, Wildhagen explained he was waiting outside to see what was going on and they came back within 10 minutes. Wildhagen confirmed the whole group ran away on foot in the direction of their parked car. He did not see anyone get into any vehicles but was "pretty sure" they did. Wildhagen thought the white BMW left and also thought a Mustang and another car drove away. At that time, an officer arrived, and the 911 call ended.

At the hearing, Wildhagen testified as follows: After the BB shots woke him, from his upstairs bedroom window he saw a white BMW drive by with its headlights off. He did not see who was in the car or who was shooting. He went downstairs and saw a hole the size of a BB in one of the side windows of his front door. At that point he called 911. As he was speaking to dispatch, he walked outside and saw the BMW parked at the corner a few houses down and three people approaching him from that direction. One of

them was wearing a burgundy jacket and white shoes. He could not identify M.O. as one of the three. He yelled at the trio to run and "[g]et the fuck away," and they ran towards the BMW. He also saw about six or seven other people who had been at the corner near the BMW start running in all directions. He saw a Mustang but could not say whether it was associated with the incident. Around this time, police arrived at the scene.

Two officers responding to the 911 call also testified at the hearing. Officer Jarett Haggmark learned before reaching Wildhagen's house that a white BMW was involved in the incident. When he arrived, he saw a white BMW within 400 yards of Wildhagen's house. There were five people in it, including M.O. in the front passenger seat. After all five were detained, officers searched the car. Officer Haggmark found a BB gun in the "map pocket" area of the passenger side front door, approximately six inches from the seat. He saw hundreds of loose BBs throughout the vehicle including on the floor of the passenger seat and on the backseats. He also found marijuana and smoking pipes. No weapons or BBs were found on M.O.

Officer Richard Scannell also responded. He met Wildhagen in front of his house. Officer Scannell was told by Wildhagen that when he walked outside, he saw a white BMW parked nearby make a U-turn and then drive past his house with its lights off. Wildhagen also told Officer Scannell that as the BMW drove past, he heard several more shots fired from the direction of the car's front passenger seat. The BMW continued driving and parked approximately 20 feet from the intersection where it was found by police. Wildhagen told Officer Scannell that when the three approaching him ran off, he saw five or six others run away but did not know who they were. Officer Scannell saw M.O. in the back of a patrol car. He was wearing a burgundy jacket, blue jeans, and white shoes. In an infield show-up, Officer Scannell asked Wildhagen to identify anyone he recognized at the scene. Wildhagen identified M.O. as one of the persons who approached his house, and he recognized two others.

Officer Scannell stated that due to a reporting mistake the BB gun was not booked under M.O.'s name but rather under the name of the driver of the BMW. Since the BB gun was located next to M.O., he should have been reported to be its owner.

Officer Scannell said that on the night of the incident Wildhagen estimated it would cost him $300 to fix his car and $200 to $300 for each of the windows. At the hearing, Wildhagen testified there were "small BB dents" to the back fender, front door, and front fender of his car, which was parked in the front of his house, as well as a small hole in a window next to the garage and some damage to the garage. He recalled estimating approximately $500 per window and $600 to fix three car panels.

The court found the allegations true. It declared M.O. a ward of the court and imposed various conditions of probation. M.O. moved for a new trial unsuccessfully, and this appeal followed.

DISCUSSION

A. Limits on Cross-Examination of Wildhagen

M.O. argues the trial court erred by foreclosing questions of Wildhagen on cross-examination regarding whether he knew anyone in the group of six and whether he was involved in illegal activity before the shooting. M.O. contends these limits prevented him from proving Wildhagen was not credible, an issue "[c]entral to the alleged delinquent conduct."

"The principles governing the admission of evidence are well settled. Only relevant evidence is admissible (Evid. Code, §§ 210, 350), 'and all relevant evidence is admissible unless excluded under the federal or state Constitutions or by statute. (Evid. Code, § 351; see also Cal. Const., art. I, § 28, subd. (d).)' [Citation.] 'The test of relevance is whether the evidence tends "logically, naturally, and by reasonable inference" to establish material facts such as identity, intent, or motive.' [Citation.] . . . [¶] The trial court has broad discretion in determining the relevance of evidence." (*People v. Harris* (2005) 37 Cal.4th 310, 337.) "A trial court's ruling to admit or exclude evidence offered for impeachment is reviewed for abuse of discretion and will be upheld unless the trial court 'exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.' [Citation.]" (*People v. Ledesma* (2006) 39 Cal.4th 641, 705 (*Ledesma*).)

On cross-examination, defense counsel asked Wildhagen if he knew anyone in the group of six he saw disperse after he yelled at the trio approaching him. The prosecutor objected on relevance grounds. The juvenile court sustained the objection, stating: "At this point I will sustain the objection as to relevance as to who it was. If you want to follow-up with the six individuals and why that may be important, but it didn't sound like those were the individuals that he saw walking to his car and going by at that time. So if you would like to follow-up maybe there will be relevance. Maybe there won't."

Defense counsel again asked Wildhagen if he knew anyone from this group of six, and the prosecutor asserted the same objection. The juvenile court asked counsel to provide an offer of proof to show how these individuals were relevant. When asked if this group of individuals were the ones shooting BB guns at his house, Wildhagen responded he was not aware of that and that he did not see who had shot the BB guns.

Defense counsel questioned Wildhagen if he had interacted with any of the six earlier that evening. The prosecutor again objected for relevance, which the court sustained. Defense counsel then asked, "Now, Mr. Wildhagen, were you doing anything illegal that night?" The prosecutor again made a relevance objection, which the court sustained. When the defense asked if it was his testimony that he did not know anybody in the group of six, Wildhagen invoked his Fifth Amendment right not to incriminate himself. The prosecutor again made a relevance objection. The court stated, "I don't understand the relevance of the other six. We are dealing with [M.O.]." Defense counsel explained that the evidence showed Wildhagen's bias and motivation to lie. The juvenile court then stated to Wildhagen, "You may answer that question. Did you know any of the individuals in the group? Other than the three that you identified by their clothing did you know any of the other ones?" Wildhagen responded, "No." He added that he did not see any of the six individuals shoot a BB gun at his house.

The trial court acted within its discretion when it sustained the prosecutor's objections. The petition contained two charges against M.O. involving vandalism and discharge of a BB gun. The evidence showed Wildhagen heard shots in the middle of the night and saw a white BMW pass by with its headlights off. When he went outside to

investigate, he saw three people approaching his house, including someone wearing a burgundy jacket and white shoes. When he yelled, the group ran. The police came, saw the white BMW, and detained the passengers inside. M.O. was wearing a burgundy jacket and white shoes. He was in the front passenger seat, closest to the BB gun, which was in the door's side pocket six inches away from him.

Wildhagen was able to identify M.O. as one of the three approaching his house who ran off when he yelled. There was no evidence connecting anyone in the group of six to the allegations against M.O. Wildhagen testified that he did not see anyone in the second group shoot BB guns. There was no evidence that anyone in the group of six had BB guns or were ever inside the BMW Wildhagen identified to the police. Absent any indication the six were involved in the vandalism and BB gun charges pending against M.O., the court's limitation of the testimony was reasonable.

Also, it appears defense counsel never took advantage of the opportunity to provide an offer of proof to show the relevance of the six. (See *People v. Brady* (2005) 129 Cal.App.4th 1314, 1332 [" 'It is the burden of the proponent of evidence to establish its relevance through an offer of proof or otherwise,' and a specific offer of proof is necessary in order to preserve an evidentiary ruling for appeal. [Citation.] 'An offer of proof should give the trial court an opportunity to change or clarify its ruling and in the event of appeal would provide the reviewing court with the means of determining error and assessing prejudice. [Citation.] To accomplish these purposes an offer of proof must be specific. It must set forth the actual evidence to be produced and not merely the facts or issues to be addressed and argued.' "].) Counsel's argument that Wildhagen's knowledge of the six would expose his bias and motivation to lie did not give the juvenile court a factual basis for the notice of the relevance of the evidence. Absent a specific offer of proof, we have no basis to conclude that further questioning of Wildhagen's knowledge of the identities of the six people near his home would have given the juvenile court a significantly different impression about his credibility.

B. Ineffective Assistance of Counsel

M.O. argues his counsel was ineffective for not specifically objecting to the juvenile court's constraints on Wildhagen's cross-examination based on the Sixth Amendment right of confrontation.[1]

To establish a claim of ineffective assistance of counsel, the defendant must show that counsel's performance was deficient in that it "fell below an objective standard of reasonableness," evaluated "under prevailing professional norms." (*Strickland v. Washington* (1984) 466 U.S. 668, 688 (*Strickland*).) "When examining an ineffective assistance claim, a reviewing court defers to counsel's reasonable tactical decisions, and there is a presumption counsel acted within the wide range of reasonable professional assistance." (*People v. Mai* (2013) 57 Cal.4th 986, 1009.) Thus, "[w]hen the record on direct appeal sheds no light on why counsel failed to act in the manner challenged, defendant must show that there was ' " 'no conceivable tactical purpose' " ' for counsel's act or omission. [Citations.]' [Citation.]" (*People v. Centeno* (2014) 60 Cal.4th 659, 675 (*Centeno*).) If counsel's performance has been shown to be deficient, the defendant is entitled to relief only if he can also establish that he was prejudiced by counsel's

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[1] The Sixth and Fourteenth Amendments to the United States Constitution guarantee that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]" (U.S. Const., 6th Amend.; *Pointer v. Texas* (1965) 380 U.S. 400, 404 [extending Sixth Amendment to state proceedings through Fourteenth Amendment].) The California Constitution also affords a criminal defendant a right of confrontation. (Cal. Const., art. I, § 15 ["The defendant in a criminal cause has the right . . . to be confronted with the witnesses against the defendant"].) To effectuate this guarantee, the trial court must afford a criminal defendant the opportunity for effective cross-examination of adverse witnesses. (*Delaware v. Fensterer* (1985) 474 U.S. 15, 19-20; *People v. Carter* (2005) 36 Cal.4th 1114, 1172.) "[T]he cross-examiner is not only permitted to . . . test the witness'[s] perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, i.e., discredit, the witness." (*Davis v. Alaska* (1974) 415 U.S. 308, 316.) Accordingly, a " ' "criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby, 'to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness.' " ' " (*People v. Chatman* (2006) 38 Cal.4th 344, 372.)

ineffectiveness. (*Strickland, supra,* 466 U.S. at pp. 691-692; accord *Ledesma, supra,* 43 Cal.3d at p. 217.) In order to show prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." (*Strickland, supra,* 466 U.S. at p. 694.)

M.O. cannot demonstrate his counsel was deficient for failing to object on this ground. The trial court retains "wide latitude in restricting cross-examination that is repetitive, prejudicial, confusing of the issues, or of marginal relevance." (*People v. Hamilton* (2009) 45 Cal.4th 863, 943.) M.O.'s argument is based on the court's limits to Wildhagen's cross-examination by foreclosing questions on whether he knew any of the six near his house and whether he was involved in illegal activity earlier in the evening. Since we have established it was not error for the court to limit the same testimony due to its marginal relevance, M.O. cannot show counsel fell below an objective standard of reasonableness in not pursuing a futile objection. (See *People v. McCutcheon* (1986) 187 Cal.App.3d 552, 558-559.)

M.O. also argues counsel was ineffective for failing to impeach Wildhagen with his prior criminal convictions.

Prior to the contested hearing, the prosecutor provided defense counsel with Widlhagen's criminal history. In 2011, he was convicted of a felony violation of Health and Safety Code section 11357, subdivision (a) (concentrated cannabis possession). In 2012, he was convicted of a felony violation of Health & Safety Code section 11359 (possession of cannabis for sale). In 2013, he was convicted for misdemeanor violations of Penal Code section 30305, subdivision (a) (unlawful possession of ammunition) and Penal Code section 484, subdivision (a) (theft). At no point during the jurisdictional hearing did defense counsel seek to impeach Wildhagen's credibility with evidence of his prior convictions. The court observed that none of Wildhagen's prior convictions had been explored at the hearing on the motion for a new trial. Defense counsel stated, "I think it was my oversight to not cross examine Mr. Wildhagen specifically on his prior

convictions for . . . possession for sale." Counsel stated he forgot to examine Wildhagen on this point, which was "crucial" and expressed "hope that the court [did] not hold that against [M.O.]."

Even if we assume defense counsel was ineffective for failing to confront Wildhagen with his prior convictions, it is not reasonably probable M.O. suffered any prejudice. As discussed above, there was strong circumstantial evidence that M.O. had committed the alleged offenses. The court made its true findings notwithstanding challenges to Wildhagen's credibility based on inconsistencies between his testimony and the 911 call. In addition, the court was also under no impression that the attack on Wildhagen's property was random. Before issuing its ruling, it stated, "I have no idea what sort of interactions may have happened prior or what Mr. Wildhagen [had] been involved with beforehand. And maybe it was up to no good." At the hearing on the motion for new trial, the court elaborated, "I think probably everybody in the courtroom thought [Wildhagen] may have done something before. Maybe he cheated the minors. Maybe he did something else." Evidence of his prior convictions would not have produced a significantly different impression of his credibility or M.O.'s guilt.

M.O. argues the circumstantial evidence that he had committed vandalism and discharged the BB gun was very weak given the number of people in the car who could have shot, the gun was booked into evidence in the name of the car owner, and there was no showing the gun was operable. But circumstantial evidence can connect a defendant with a crime and prove his guilt beyond a reasonable doubt. (*People v. Howard* (2010) 51 Cal.4th 15, 34.) " ' " 'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment.' " ' " (*People v. Stanley* (1995) 10 Cal.4th 764, 792-793.) The inferences drawn from the circumstantial evidence before the juvenile court were reasonable. In the middle of the night, Wildhagen saw a white BMW drive by his house as it was struck by BB shots. Moments later, a person coming from the parked BMW wearing a burgundy jacket and white shoes approached Wildhagen's house. M.O. was wearing a burgundy jacket and

white shoes when he was found in the front passenger seat of the BMW with a BB gun next to him. These circumstances reasonably support the juvenile court's findings.

M.O. further contends "the prior convictions could have tied Wildhagen's credibility to illicit activities on the night of the crime, to which he repeatedly asserted the Fifth Amendment." He adds counsel's failure to impeach Wildhagen gave him a " 'false aura of veracity.' " The court was well aware that Wildhagen may have been "up to no good" that evening. Any suggestion that he had an "aura of veracity" is overstated.

C. Electronic Search Probation Condition

Finally, M.O. contends the juvenile court erred by imposing unreasonable and overbroad probation conditions authorizing the warrantless search of electronic devices and compelling disclosure of the passwords to those devices.[2]

Among the numerous probation conditions imposed on M.O. was an electronic search condition which stated in relevant part: "The minor [shall] submit all electronic devices under [his] control to search and seizure by any law enforcement or probation officer at any time of the day or night with or without a search warrant, arrest warrant, or reasonable suspicion. The minor shall also disclose any and all passwords, passcodes, password patterns, fingerprints, or other information required to gain access into any electronic device as requested by any law enforcement or probation officer. Contraband seized by the probation officer shall be disposed of, stored or returned at the discretion of the probation officer." Another condition required M.O. to avoid all contact and communication with the driver of the BMW and one of the others at the scene the night of the incident except as required during school classes or school events, or as approved in advance by the probation officer.

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[2] Our Supreme Court is currently considering the validity of electronic search conditions in a variety of factual settings. (See, e.g., *In re Ricardo P.* (2015) 241 Cal.App.4th 676, review granted Feb. 17, 2016, S230923; *In re Patrick F.* (2015) 242 Cal.App.4th 104, review granted Feb. 17, 2016, S231428; *In re Alejandro R.* (2015) 243 Cal.App.4th 556, review granted March 9, 2016, S232240; *In re Mark C.* (2016) 244 Cal.App.4th 520, review granted April 13, 2016, S232849; *In re A.S.* (2016) 245 Cal.App.4th 758, review granted May 25, 2016, S233932.)

1. Lent *Analysis*

M.O. first contends the electronic search condition was unreasonable because it was not reasonably related to his offense or prospects of rehabilitation. He says that "no evidence connects his offense, or chances of rehabilitation, to the use of electronic devices."

Welfare and Institutions Code section 730 authorizes the juvenile court to "impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." (Welf. & Inst. Code, § 730, subd. (b).) The juvenile court has broad discretion (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5.), but it is not unlimited. A probation condition is invalid if it: "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality." (*People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*).) "This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term." (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*).) Probation conditions are reviewed for abuse of discretion, i.e., when the "determination is arbitrary or capricious or ' " 'exceeds the bounds of reason, all of the circumstances being considered.' " ' " (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.)

There is no dispute that the first two *Lent* factors are satisfied. The electronic search condition is not directly related to the vandalism or discharge of a BB gun allegations found true by the juvenile court. Nor is possessing an electronic device inherently unlawful. The parties disagree, however, on whether the third *Lent* factor—the condition's deterrent effect on future criminality—is satisfied. We conclude it is not.

An electronic search condition, such as the one imposed here, may be reasonably related to a probationer's future criminality, even if the underlying offense is not directly tied to the use of electronic devices. A minor's history and overall circumstances may make it reasonable for the probation department to search electronic devices and/or internet activity to monitor compliance with conditions such as refraining from use of

drugs or avoiding contact with specific individuals or prohibited locations. (See *In re P.O.* (2016) 246 Cal.App.4th 288, 295 (*P.O.*).) While M.O. correctly points out that the discharge of a BB gun was the defining feature of his offense, it was not the only one. Other aspects of that evening can also reasonably bear on the court's decision to impose certain probation conditions. When M.O. discharged the BB gun, he did so in the middle of the night and was with at least four others. As part of his probation, he was required to be home in the middle of the night and to stay away and not communicate with certain individuals who were in the BMW and detained with him. The electronic search condition will allow probation to effectively supervise M.O.'s compliance with these other probation conditions and to enforce their terms. Because the electronic search condition is reasonably related to future criminality, the third prong of *Lent* is not satisfied and the electronic search condition is not invalid. (See *Ibid.*)

2. Overbreadth

Finally, M.O. contends the electronic search condition is unconstitutionally overbroad because it is not supported by a legitimate state interest or narrowly tailored to meet that interest. Here, he has a point.

When a probation condition imposes limitations on a person's constitutional rights, it " 'must closely tailor those limitations to the purpose of the condition' "—that is, the probationer's reformation and rehabilitation—" 'to avoid being invalidated as unconstitutionally overbroad.' " (*Olguin, supra*, 45 Cal.4th at p. 384.) "The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the [probationer]'s constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement." (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.) " ' "Even conditions which infringe on constitutional rights may not be invalid [as long as they are] tailored specifically to meet the needs of the juvenile." ' " (*In re Tyrell J.* (1994) 8 Cal.4th 68, 82, disapproved on other grounds in *In re Jaime P.* (2006) 40 Cal.4th 128, 130.) We review constitutional challenges to probation conditions de novo. (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1143.) In an appropriate case, a

probation condition that is not sufficiently precise or narrowly drawn may be modified in this court and affirmed as modified. (See, e.g., *In re Sheena K.* (2007) 40 Cal.4th 875, 892.)

We agree the electronic search condition is overbroad. The information that may be contained in M.O.'s electronic devices and accounts is expansive. (See *Riley v. California* (2014) 573 U.S. 373, 395-397 ["broad array of private information" contained on cell phones].) As phrased, the condition does not limit the type of data on or accessible through M.O.'s electronic devices that may be searched for permissible purposes. The condition as drafted therefore permits review of private information that is highly unlikely to shed any light on whether M.O. is complying with his probation. As a result, we conclude it is not narrowly tailored to accomplish M.O.'s rehabilitation. To achieve the constitutionally mandated requirement that the condition be narrowly tailored to its purposes and the minor's needs, it must be modified to limit warrantless searches of M.O.'s electronic devices and accounts to data and communications reasonably likely to reveal whether he is violating his probation conditions. The compelled disclosure of passwords to those devices must be similarly limited to those necessary to access the information specified.

The People argue the challenged probation condition is not unconstitutionally overbroad. In the People's view, the challenged condition "is sufficiently tailored to the legitimate purpose of monitoring [M.O.'s] compliance with probation terms, and for the deterrence of future criminality and protection of the public." Our modification clarifies this purpose.

DISPOSITION

The electronic search condition imposed by the juvenile court is modified to read: "The minor shall submit all electronic devices under his control to search and seizure by any law enforcement or probation officer at any time of the day or night with or without a search warrant, arrest warrant, or reasonable suspicion. Such a search is limited to any medium of communication reasonably likely to reveal whether he is complying with the terms of his probation or is involved in criminal activity. The minor shall also disclose

any and all passwords, passcodes, password patterns, fingerprints, or other information necessary to access the information specified in any electronic device as requested by any law enforcement or probation officer. Contraband seized by the probation officer shall be disposed of, stored or returned at the discretion of the probation officer." As so modified, the orders are affirmed in all other respects.

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Siggins, P.J.

WE CONCUR:

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Petrou, J.

_____
Wiseman, J.*

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* Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.